

1. Applicant's Name: [REDACTED]**a. Application Date:** 12 November 2023**b. Date Received:** 20 November 2023**c. Counsel:** None**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is General (Under Honorable Conditions). The applicant requests an upgrade to Honorable and their separation code changed.

b. The applicant seeks relief contending, they have served in the U.S. Army for 3 years and 9 months, with nothing short of a stellar career, as a specialist in the 3rd Armored Brigade Combat Team. During the countless field exercises, operational missions to include a rotation in South Korea, within the 215th Brigade Support Battalion and the 3rd Armored Brigade Combat Team, the applicant has always maintained a very high standard of military bearing, professionalism, and degree of customs and courtesies. Their interactions with their leadership, NCOs (noncommissioned officers), peers, and subordinates were always with the utmost respect. The applicant was always prepared for exercises and missions by being the Soldier in the company, in which their NCOs could rely on to ensure mission success. Until this pending action, they have not received any disciplinary action for their behavior. They are aware of the impending punishment, but believed they do not indicate a person that possesses a threat to the professional image and integrity of our Army. They are requesting at a minimal, to be separated with an Honorable discharge.

c. Board Type and Decision: In a records review conducted on 30 October 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, no change to separation code of JKK, and the reentry code will change to RE-3.

Please see Section 9 of this document for more detail regarding the Board's decision.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Drug Abuse) / AR 635-200, [Chapter 14-12c (2)] / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 8 June 2022**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: Undated

(2) Basis for Separation: On or between 31 July – 31 August 2021, they wrongfully used marijuana.

(3) Recommended Characterization: General (Under Honorable Conditions)

(4) Legal Consultation Date: 17 May 2022

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: Undated / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 25 March 2021 / 3 years (1st Reenlistment)

b. Age at Enlistment / Education / GT Score: 28 / High School Diploma / 96

c. Highest Grade Achieved / MOS / Total Service: E-4 (SPC) / 88M10 Motor Transport Operator / 3 years, 9 months, 26 days

d. Prior Service / Characterizations: Regular Army (RA), 13 August 2017 – 24 March 2021 / Honorable

e. Overseas Service / Combat Service: Korea / None (14 June 2019 – 27 February 2020) / 8 months, 14 days

f. Awards and Decorations:

- Army Achievement Medal (2nd Award)
- Army Good Conduct Medal
- National Defense Service Medal
- Korea Defense Service Medal
- Army Service Ribbon
- Driver and Mechanic Badge w/Driver-Wheeled Vehicles Clasp

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 25 March 2021, the applicant completed their first reenlistment in the Regular Army (RA) for 3 years as a specialist, SPC (E-4), with 2 years, 7 months, and 12 days of prior active duty. The Enlisted Record Brief provides on 14 October 2021, the applicant was flagged, Suspend Favorable Personnel Actions (FLAG), for drug abuse adverse action (UA).

(2) On 22 April 2022, the applicant received nonjudicial punishment (NJP) for having wrongfully used marijuana on or about 31 July – 31 August 2021. Their punishment imposed a reduction to private second class, PV2 (E-2); forfeiture of \$1,027 pay for one month, suspended for 30 days; and extra duty for 30 days.

(3) Although undated, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse), for wrongful use of marijuana on or about 31 July – 31 August 2021 and recommended a General (Under Honorable Conditions) characterization of service. On 09 May 2022, the applicant acknowledged receipt of their separation notice. On 17 May 2022, they elected to consult with counsel and elected to provide a statement on their behalf. Defense counsel acknowledged their election, counseled the applicant on the effects of their separation and on the rights available to them, including the right to waive those rights. The battalion commander concurred with the company commander's recommendation.

(4) While the date is unknown, the separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service. On 24 May 2022, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 8 June 2022, with 3 years, 10 months, and 21 days of total service. An extension of service was at the request and for the convenience of the government. They provided their electronic signature and have completed their first full term of service.

i. **Lost Time / Mode of Return:** None

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** The applicant provided a report indicating they were diagnosed with cannabis use disorder, dated 15 November 2021; however, further details are not provided.

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: Application for the Review of Discharge; Certificate of Release or Discharge from Active Duty; Army Substance Abuse Program Report; Self-Authored Statement; Four Character Statements are provided below:

a. On 18 October 2021, the applicant's mother-in-law contends, during a family celebration, they were eating alcohol soaked gummies and their son was indulging in gummies containing THC and left them out, and the applicant mistakenly ate the THC gummies. Shortly thereafter, the applicant knew something was "not right" and they purchased a cleanse to try to remedy the situation but it was an unfortunate accident. The applicant's character and conduct speaks for themselves.

b. First sergeant contended the applicant should be retained and be allowed to continue their service in the U.S. Army as they have been nothing short of stellar and resourceful since 1SG have known them. They met the applicant at the training center while preparing for South Korea and was immediately impressed at their performance level and eagerness to get after the mission. The applicant is well respected amongst their peers and is a role model. They have not had any disciplinary actions and the applicant's character and work ethic were too rare to risk losing over a one-time, out of character incident.

c. SSG contends, they have known the applicant for three years and have served with them on a rotation to Korea. The applicant was an exemplary, who was hardworking, cool under pressure, and a strong-minded Soldier. The applicant was a go to Soldier and go far, with a career full of accomplishments and endeavors.

d. Their brother-in-law (SSgt medically retired from the Marines) contends, during a family celebration, they were drinking and consuming alcohol soaked gummies. At one point the BIL consumed gummies containing THC and failed to properly secure them, having left them out. The applicant consumed the THC gummies, under the impression these were the alcohol gummies. The BIL states they would have never allowed the applicant to knowingly consume them and ruin their career. After they discovered what happened, they purchased a "cleanse" for the applicant and it was an accident they wish they could change.

6. POST SERVICE ACCOMPLISHMENTS: None provided with this application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) An Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(2) A General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(3) An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. A Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

(5) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse).

f. Army Regulation 601-210, Regular Army, and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)), provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers for ASAP services. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission.

(1) Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

(2) ASAP participation is mandatory for all Soldiers who are command referred. Failure to attend a mandatory counseling session may constitute a violation of Article 86 (Absence Without Leave) of the UCMJ.

(3) Alcohol and/or other drug abusers, and in some cases dependent alcohol users, may be enrolled in the ASAP when such enrollment is clinically recommended. Soldiers who fail to participate adequately in, or to respond successfully to, rehabilitation will be processed for administrative separation and not be provided another opportunity for rehabilitation except under the most extraordinary circumstances, as determined by the Clinical Director in consultation with the unit commander.

(4) All Soldiers who are identified as drug abusers, without exception, will be referred to the ASAP counseling center for screening; be considered for disciplinary action under the UCMJ, as appropriate; and be processed for administrative separation in accordance with Army Regulation 635-200.

h. Manual for Courts-Martial (2019 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces. Article 112a (wrongful use of a schedule II controlled substance, marijuana) states in the subparagraph, the maximum punishment consists of a bad conduct discharge, forfeiture of all pay and allowances, and confinement for five years.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests an upgrade to Honorable and a change to their separation code. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. The available evidence provides the applicant completed their first reenlistment in the RA as a SPC, with 2 years, 7 months, and 12 days of prior active duty and served an overseas tour in Korea for over eight months. The applicant served for nearly seven months prior to the misconduct which led to their discharge.

(1) They received NJP for having tested positive for marijuana (Article 112a, UCMJ, wrongful use of controlled substance) and as a result, was reduced to PV2. Separation proceedings were initiated under the provisions of AR 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse), with a General (Under Honorable Conditions) characterization of service. They elected to consult with legal and elected to submit a statement on their behalf. Defense counsel advised them on the effects of their separation and the rights available to them, including the right to waive their rights.

(2) The record does not provide the mental status and medical examinations, which are required with this separation chapter. The applicant completed 1 year, 2 months, and 14 days of their 3 year contractual obligation.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

d. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnosis: Anxiety Disorder

(2) Did the condition exist or experience occur during military service? **Yes.** The Anxiety Disorder is documented as secondary to the separation process and discharge rather than existing prior to.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that given the condition was a result of the separation rather than prior to the positive UA, it is noncontributory.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's medical conditions outweighed the basis for separation.

b. Prior Decisions Cited: None

c. Response to Contention(s): The applicant seeks relief contending, they have served in the U.S. Army for 3 years and 9 months, with nothing short of a stellar career, as a specialist in the 3rd Armored Brigade Combat Team. During the countless field exercises, operational missions to include a rotation in South Korea, within the 215th Brigade Support Battalion and the 3rd Armored Brigade Combat Team, the applicant has always maintained a very high standard of military bearing, professionalism, and degree of customs and courtesies. Their interactions with their leadership, NCOs (noncommissioned officers), peers, and subordinates were always with the utmost respect. The applicant was always prepared for exercises and missions by being the Soldier in the company, in which their NCOs could rely on to ensure mission success. Until this pending action, they have not received any disciplinary action for their behavior. They are aware of the impending punishment, but believed they do not indicate a person that possesses a threat to the professional image and integrity of our Army. They are requesting at a minimal, to be separated with an Honorable discharge. The Board acknowledged this contention and voted to upgrade the characterization of service to Honorable.

(1) The applicant's mother-in-law contends, during a family celebration, they were eating alcohol soaked gummies and their son was indulging in gummies containing THC and left them out, and the applicant mistakenly ate the THC gummies. Shortly thereafter, the applicant knew something was "not right" and they purchased a cleanse to try to remedy the situation but it was an unfortunate accident. The applicant's character and conduct speak for themselves. The Board acknowledged this contention.

(2) First sergeant contended the applicant should be retained and be allowed to continue their service in the U.S. Army as they have been nothing short of stellar and resourceful since 1SG have known them. They met the applicant at the training center while preparing for South Korea and was immediately impressed at their performance level and eagerness to get after the mission. The applicant is well respected amongst their peers and is a role model. They have not had any disciplinary actions and the applicant's character and work ethic were too rare to risk losing over a one-time, out of character incident. The Board acknowledged this contention and considered it during their deliberations.

(3) SSG contends, they have known the applicant for three years and have served with them on a rotation to Korea. The applicant was an exemplary member, who was hardworking, cool under pressure, and a strong-minded Soldier. The applicant was a go to Soldier and go far, with a career full of accomplishments and endeavors. The Board acknowledged this contention and considered it during their deliberations.

(4) Their brother-in-law (SSgt medically retired from the Marines) contends, during a family celebration, they were drinking and consuming alcohol soaked gummies. At one point consumed gummies containing THC and failed to properly secure them, having left them out. The applicant consumed the THC gummies, under the impression these were the alcohol gummies. They would have never allowed the applicant to knowingly consume them and ruin their career. After they discovered what happened, they purchased a "cleanse" for the applicant and it was an accident they wish they could change. The Board acknowledged this contention.

d. The Board determined the discharge is inequitable based on the applicant's length and quality of service that outweighed the applicant's basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, no change to separation code of JKK, and the reentry code will change to RE-3.

e. Rationale for Decision:

(1) The Board recommended an upgrade to Honorable based on the applicant's in-service factors (length, quality, and prior period of Honorable service) outweighed the applicant's basis for separation (wrongful use of marijuana). Additionally, the Board recommended an upgrade based on one-time drug use and the applicant had chain of command support.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20240000877

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code as the reason the applicant was discharged was both proper and equitable.

(3) The Board voted to change the RE code 4 to RE-3.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: No change
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200

Authenticating Official:

11/6/2024



AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs